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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of)
)
Implementation of the)
Cable Television Consumer)
Protection and Competition)
Act of 1992)
)
Mandatory Carriage of)
Broadcast Television Signals)
)

MM Docket No. 92-259 /

TO: The Commission

REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF TELECOMMUNICATIONS
OFFICERS AND ADVISORS, NATIONAL LEAGUE OF
CITIES, UNITED STATES CONFERENCE OF MAYORS,
AND THE NATIONAL ASSOCIATION OF COUNTIES

The National Association of Telecommunications
Officers and Advisors, the National League of Cities,
the United States Conference of Mayors, and the National
Association of Counties (collectively, the "Local
Governments") hereby submit these reply comments in the
above-captioned proceeding soliciting comment on
proposed rules governing the mandatory carriage
provisions of Sections 614 and 615 of the Communications
Act of 1934, as amended (the "Act"), as adopted in
Sections 4 and 5 of the Cable Television Consumer

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Protection and Competition Act of 1992 (the "1992 Act").¹

I. PEG CHANNELS.

A. "In Use for Designated Purpose".

In their initial comments filed in this proceeding, the Local Governments urged the Commission to adopt specified procedures for determining when cable system public, educational, or governmental channels ("PEG Channels") are not in use for their designated purposes and may accordingly be used for the carriage of certain qualified low power and local noncommercial educational television stations under the 1992 Act.

The procedures proposed by the Local Governments were narrowly drawn so as to ensure that PEG Channels would be fully available to satisfy the purposes for which Congress intended them -- that is, as an important means by which members of the public may become sources of information in the electronic marketplace.

Commenters in this proceeding have proposed that PEG Channels should not be deemed to be in "use for their designated purpose" (and should therefore be

¹ The failure of the Local Governments to reply to any comments filed in this proceeding is not necessarily intended to be construed as concurrence with those comments.

available for the transmission of mandatory carriage signals) if the primary purpose for which a PEG Channel is utilized is the transmission of character-generated community "bulletin-board"-type information. Without support, these commenters suggest that a PEG Channel's "designated purpose" should primarily be the transmission of video programming similar to that provided by a television broadcaster.

The Local Governments strongly dispute the contention that PEG Channels are meant to serve as "clones" for conventional over-the-air broadcast television service. To the contrary, it is precisely because of the unique nature of the services that PEG Channels can and are intended to provide that Congress has authorized franchising authorities to require cable operators to dedicate channels especially devoted to PEG use in addition to requiring carriage of conventional over-the-air broadcast television signals. Bulletin-board video programming provides important information about current local events (and sometimes constitutes the sole or most current source of such information) in a community. Transmission of such programming is clearly a use to which PEG Channels are appropriately and productively put. "Public access channels are often the ... electronic parallel to the printed leaflet."

H.R. Rep. No. 98-934, 98th Cong., 2d Sess. 30 (1984).

The Commission should reject commenters' suggestion.

The Commission should also reject the suggestion that it adopt rules providing that a PEG Channel is not in use for its intended purpose if it exhibits bulletin-board information that is also transmitted on another PEG Channel of the same system.

Unlike the mandatory carriage requirements of the 1992 Act, which limit the circumstances under which cable operators can be required to afford carriage to duplicative broadcast signals, Congress refrained from imposing any limitations in connection with the transmission of duplicative material over PEG Channels, and explicitly conferred upon the franchising authority the power to determine when a PEG Channel should or should not be deemed to be in use for its intended purpose.

As the Local Governments noted in their initial comments in this proceeding, it is the local franchising authority (often in conjunction with independent local public access organizations), by virtue of its knowledge of the programming needs of the specific franchise community and as the body which requires dedication of PEG Channels by cable operators in the first instance, rather than the Commission, that is best equipped to determine whether a particular service provided over a

PEG Channel is or is not a use for which the PEG Channel is intended. It is precisely the sort of detailed, narrow standard that the Commenters urge upon the Commission which the Commission should refrain from adopting, in order to ensure that public access organizations, local franchising authorities and cable operators retain the flexibility in individual cases to ensure that PEG Channels are utilized in a fashion which best serves the public's interests.

B. Redesignation of PEG Channels.

At least one commenter has urged the Commission to require that in circumstances where a PEG Channel is utilized for carriage of a mandatory carriage signal and the PEG Channel is thereafter needed for a PEG-related purpose, the cable operator should be required, before repositioning the mandatory carriage signal off of the PEG Channel, to attempt to designate another channel for PEG purposes, and retain the mandatory carriage signal on the channel on which it is being carried.

The Local Governments oppose this proposal.

As an initial matter, the Local Governments note that the number of instances in which a cable operator would have the ability to designate another PEG Channel in such circumstances would be very small, since Section 623(b)(7) of the Act (as adopted by Section 3 of the

1992 Act) requires that PEG Channels be carried on a cable system's basic tier of service, and cable operators presumably would only have positioned a mandatory carriage signal on a PEG Channel if no other channels on the basic service tier were available.²

In any event, the Local Governments oppose the proposal for many of the same reasons articulated in the discussion above -- namely, that a detailed requirement of the sort advocated would restrict the ability of franchise authorities and local access organizations to craft workable and flexible PEG Channel access programs in their communities. For example, many franchise agreements specify the channels on which PEG services must be provided. Adoption of the rule proposed could require wholesale modification of such franchise agreements.

Congress specifically authorized franchising authorities to determine when a PEG Channel is in use for its intended purpose. The FCC should not impose detailed requirements unreasonably restricting the franchising authority's ability to make this judgment in its own discretion.

² Indeed, the Local Governments urged the Commission in their initial comments to clarify that mandatory carriage signals may never be carried on a PEG Channel if the cable operator has any non-PEG Channel capacity available elsewhere on the cable system for transmission of the mandatory carriage signal.

II. SUBSCRIBER INFORMATION.

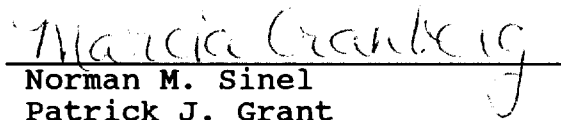
The Local Governments advocated in their initial comments that cable operators be required to provide notice to subscribers and to the affected station thirty days prior to the repositioning or deletion of the signal of either a commercial or noncommercial mandatory carriage station. Several commenters opposed a subscriber notification requirement in connection with commercial stations, noting that a subscriber notice requirement is only explicitly provided for in the 1992 Act in connection with noncommercial stations.

The Commenters have failed to provide any compelling justification for opposing a simple subscriber notification requirement. In other Commission proceedings (such as those proposing syndicated exclusivity rules, requiring cable operators to "black out" programming to which a local station has exclusive rights, for example), cable interests have exhibited a substantial concern over the effect that disruption in programming can have on cable subscribers. Deletion or repositioning of a mandatory carriage signal is extremely disruptive to subscribers accustomed to viewing that signal. Cable operators should be required to engage in the simple expedient of providing reasonable advance notice of such actions.

CONCLUSION.

The Local Governments urge the Commission to refrain from adoption of narrow rules governing the determination of when a PEG Channel should be made available for mandatory signal carriage, and instead to permit local franchising authorities, as explicitly directed by Congress, to make such determinations in accordance with the guidelines proposed in the initial comments of the Local Governments. The Commission also should require cable operators to provide advance notice to subscribers whenever a commercial or noncommercial mandatory carriage station is deleted or repositioned.

Respectfully submitted,


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